Supreme Court, U.S.
FILED

941709 APR 19 1995

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1994

No.

Tyrone Thomas,

Petitioner

vs

Marie Baxter,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Tyrone Thomas
Pro Se
5516 Dawes Avenue
Alexandria, Virginia
22311
(703) 671-4455

April 1995

QUESTION PRESENTED

Can the standard for determining nondischargeability of taxes in bankruptcy be lessened in violation of the Fourteenth Amendment?

TABLE OF CONTENTS

Question Presented	i
Table of Contents	ii
Table of Authorities	iii
Parties to Proceeding	1
Opinions Below	2
Jurisdiction	2
Constitutional and Statutory Provisions	3
Statement of the Case	3
Argument	6
Conclusion	12
Appendix A	A1
Appendix B	A3
Appendix C	A5
Appendix D	A6
Appendix E	A11
Appendix F	A12
Appendix G	A14
Appendix H	A16

TABLE OF AUTHORITIES

Case	Page
Adler v Nicholas, 381 F2d 168 (1967)	10
Concrete Pipe and Products of California, Inc. v Construction Laborers Pension Trust for Southern California, 113 S Ct 2264 (1993)	6
Fusari v Steinberg, 419 US 379 (1974)	8
Grogan v Garner, 498 US 279 (1991)	8
In re Catron, 164 BR 908 (ED Va 1992)	10
In re Catron, 164 BR 912 (ED Va 1994)	10
In re Freeman, 165 BR 307 (SD Fla 1994)	8, 9
In re Winship, 397 US 358 (1970)	6
Kelley, et al v Everglades Drainage District, 319 US 415 (1943)	8
Sumner, Warden v Mata, 499 US 539 (1980)	7
United States v Sotelo, et ux, 436 US 268 (1977)	8
United States v United States Gypsum Company, 333 US 364 (1948	7
Statues and Regulations	
Bankruptcy Act, Section 507	10
Bankruptcy Act, Section 523	10
Internal Revenue Code, Section 6501	10
United States Constitution	
Fourteenth Amendment	8, 11

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

Tyrone Thomas,

Petitioner

vs.

Marie Baxter,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Tyrone Thomas petitions this Court for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit to review the judgment in Tyrone Thomas vs. Marie Baxter under Chapter 7 of the Bankruptcy Code.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unpublished and is retyped in the Appendix at 3. The opinion of the United States District Court for the Eastern District of Virginia is unpublished and is retyped in the Appendix at 5. The opinion of the United States Bankruptcy Court for the Eastern District of Virginia is unpublished and is retyped in the Appendix at 6.

JURISDICTION

The decision of the Court of Appeals was entered December 20, 1994. A Petition for Rehearing With Suggestion for En Banc Rehearing was filed pursuant to Rules 35 and 40, Fed Rules Appellate Procedure. That petition was deemed timely and denied

January 20, 1995. The Order denying rehearing is presented in the Appendix at 1.

This petition for certiorari was filed within ninety (90) days of the date of denial of the petition for rehearing. Accordingly, this petition is filed within the time allowed by law. The jurisdiction of this Court is invoked under 28 USC Section 1254 (1) (1988).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent provisions of the United States Constitution, the Bankruptcy Act and the Internal Revenue Code are set forth in an Appendix.

STATEMENT OF THE CASE

I. Basis for Federal Jurisdiction

The jurisdiction of the Bankruptcy Court was invoked under 28 USC Sections 1334 and 157(b). The jurisdiction of the District Court was invoked under 28 USC Section 158(a).

The jurisdiction of the Court of Appeals was invoked under 28 USC Section 158(d).

II. Statement of Facts

Petitioner filed a petition under Chapter 7 of the Bankruptcy Code April 26, 1990 in Case No. 90-10983. Respondent filed a Complaint Objecting to Dischargeability of Debt pursuant to 11 USC Section 523 of the Bankruptcy Code in Adversary Proceeding 90-1183 dated August 6, 1990. Petitioner filed an Answer August 30, 1990 and an Amended Answer October 22, 1990. Petitioner's First Set of Interrogatories and Request for Production of Documents were filed October 31, 1990 pursuant to Rule 405 of the Bankruptcy Court Rules of Procedure. The interrogatories were never answered. A Motion to Extend Time was filed November 23, 1990, but a date for a hearing on the Motion was not set. At trial on December 5, 1990 the bankruptcy court ruled that Petitioner owed Respondent taxes.

Respondent was told to prepare an Order.

On July 1, 1993 Respondent filed a Motion for Entry of Order from the December 1990 hearing. The Order was entered on the docket August 5, 1993. A Motion for Reconsideration was filed August 13, 1993 and an Order denying the Motion was entered on the docket October 1, 1993.

Petitioner appealed to the United States District Court for the Eastern District of Virginia having found documentation which indicated that the taxes involved were for the tax periods December 31, 1978 and December 31, 1982 respectively and that the dates of assessment had been August 18, 1988 and June 15, 1989 respectively. The documentation was submitted in addition to a Brief on December 8, 1993. The judgment of the Bankruptcy Court was affirmed February 25, 1994.

Notice of Appeal was filed March 3, 1994.

The decision of the United States District for the Eastern District of Virginia was affirmed December 20, 1995.

The record indicated an inability to pay the obligations assumed in 1984. The schedules further indicated that Petitioner's financial condition had not improved at the time of the Chapter 7 filing in 1990. There had been and continued to be a lack of funds.

ARGUMENT

I. The Decision Below Conflicts With Decisions of this Court as To Standards of Proof

The burden of showing something by a preponderance of the evidence simply requires the trier of fact to believe that the existence of a fact is more probable than its non-existence. Concrete Pipe and Products of California, Inc. v Construction Laborers pension Trust for Southern California, 113 S. Ct 2264 (1993); In re Winship, 397 US 358 (1970). A fact, however, is clearly

erroneous when although there is evidence to support it, the reviewing body is left with the definite and firm conviction that a mistake has been committed. United States v United States Gypsum Company, 333 US 364 (1948).

Findings of fact made by a state court system are presumed to be correct and the interests of federalism requires deference to state court decisions. A reviewing court that disagrees with a factual determination must include in its opinion the reasoning which lead it to conclude that elements necessary to establish the case were not present or the reasoning which lead it to conclude that the state findings were not fairly supported by the record. Sumner, Warden v Mata, 499 US 539 (1980). In cases involving the Bankcuptcy Act and the Internal Revenue Code there is an analysis

of the provisions of the Act and the Code as they apply to the fact situations of the case. United States v Sotelo, et ux, 436 US 268 (1977). The Due Process Clause of the Fourteenth Amendment of the United States Constitution requires that the statutory requirements be met. Fusari v Steinberg, 419 US 379 (1974); Kelley, et al v Everglades Drainage District, 319 US 415 (1943).

II. The Standards For Determining Non-Dischargeability Generates Conflicting Decisions

Dischargeability is a matter of federal law governed by the Bankruptcy Code. Grogan v Garner, 498 US 279 (1991). The creditor has the burden of establishing that a debt is non-dischargeable, including a claim of alimony or support. In re Freeman, 165 BR 307 (Bkrtcy SD Fla 1994).

Factors to consider in determining whether an obligation is in the nature of

alimony of support are: length of marriage, whether the obligations are subject to contingencies such as remarriage or death, whether there are minor children, whether the payment appears to balance disparate incomes, whether the obligation is payable as a lump sum or periodically, whether there is an actual need for support, whether the award is modifiable, and the section of the agreement where the clause is included. The three factors that dominate are: the language and substance of the agreement in the context of surrounding circumstances, using extrinsic evidence of hearsay; financial circumstances of the parties at the time of the settlement; and an obligation that serves to maintain daily necessities such as food, housing, and transportation is indicative of a debt intended to be in the natu-e of support. In re Freeman, 165 BR 307 (Bkrtcy SD Fla 1994).

It is the duty of the Court to place itself in the situation of the parties, and from a consideration of the surrounding circumstances, the occasion, and apparent object of the parties, to determine the meaning and intent of the language employed in the Property Settlement Agreement. Adler v Nicholas, 381 F2d 168 (1967).

It has been suggested that in some cases there might be an erroneous conclusion that the intent was alimony, maintenance or support. In re Catron, 164 BR 908 (Bkrtcy ED Va 1992). In re Catron, 164 BR 912 (Bkrtcy ED Va 1994).

III. The decision below conflicts with statutory regulations

The Bankruptcy Act allows for the discharge of taxes under some circumstances in Sections 507 and 523. The Internal Revenue sets out a three year rule in Section 6501. Furthermore, taxes assessed within 240 days of

petition are nondischargeable, and those assessed outside of two hundred forty (240) days are dischargeable.

The Internal Revenue Code also sets out rules and regulations applicable to bankruptcy proceedings. Matters for consideration are contained in the Appendix.

IV. The hearing procedure violated the Due Process Clause of the United States Constitution

A fair hearing requires that parties have a meaningful opportunity to gather evidence or information prior to a hearing. A fair hearing also requires that Orders be filed in less than two and one-half (2½) years after a hearing for the purpose of preserving evidence in the event of appeal. Arbitrary proceedings disadvantage petitioner and have the appearance of unfairness. Such proceedings also give the appearance of disregarding the truth of a matter or what may be the truth of a matter.

CONCLUSION

Therefore, the Petitioner respectfully urges that the Court grant its Petition for a Writ of Certiorari and reverse the decision of the Fourth Circuit Court of Appeals.

Respectfully submitted,

Tyrone Thomas
Pro Se
5516 Dawes Avenue
Alexandria, Virginia
22311
(703) 671-4455

April 1995

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Filed
January 20, 1995

No. 94-1358
CA-93-1455-A

TYRONE THOMAS

Plaintiff-Appellant

v.

MARIE BAXTER

Defendant - Appellee

On Petition for Rehearing with Suggestion for Rehearing in Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court for the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied.

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ Bert M. Montague

CLERK

APPENDIX B

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 94-1358

THRONE THOMAS,

Plaintiff - Appellant

versus

MARIE BAXTER,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (CA-93-1455-A)

Submitted: September 27, 1994
Decided: December 20, 1994

Before MURNAGHAN, NIEMEYER, and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Tyrone Thomas, Appellant Pro Se. Neil David Goldman, YOUNG, GOLDMAN & VAN BEEK, Alexandria, Virginia, for Appellee

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:

Appellant appeals from the district court's order affirming the decision of the bankruptcy court. Our review of the record and the district court's opinion discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. Thomas v. Baxter, No. CA-93-1455-A (E.D. Va. Feb. 28, 1994): see Transcript of motion proceedings (Feb. 25, 1994). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

TYRONE THOMAS,

Plaintiff,

v.

CIVIL ACTION NO.
93-1455-A

MARIE BAXTER,

Defendant

ORDER

The appellant having failed to appear to argue this appeal and for the reasons stated in open court, the Bankruptcy Court's judgment of August 5, 1993, is hereby AFFIRMED.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this 25th day of February, 1994.

Leonie M. Brinkema
United States District
Judge

Alexandria, Virginia

APPENDIX D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE:

TYRONE THOMAS, Case No. 90-10983-AB
(Chapter 7)

Debtor

MARIE BAXTER,

Plaintiff,

v. Adversary Proceeding
No. 90-1183-AB

TYRONE THOMAS,

Defendant.

ORDER

This cause came to be heard on Plaintiff's Complaint objecting to dischargeability of debt. Following trial, the Court makes the following findings of fact, conclusions of law and judgment.

Findings of Fact

1. Plaintiff Marie Baxter ("Wife") and Defendant Tyrone Thomas ("Husband") were married on August 28, 1976.

2. The parties later separated on or about January 10, 1984, and were divorced by final judgment and decree entered August 6, 1984 in the DeKalb Superior Court in Georgia. The Decree specifically incorporated the Separation Agreement between the parties dated June 21, 1984 ("Agreement") which had been drafted by Husband's attorney.

3. Paragraph 5 of the Agreement obligated Husband to "pay and back taxes or current taxes due, jointly or severally, by the parties prior to the effective date of this Agreement."

4. The Husband failed to pay such back

taxes, and as a result, Wife made payments to the Internal Revenue Service of the sum of Five Thousand One Hundred Eighty-Two and 45/100 Dollars ($5,182.45) which payments were encompassed by paragraph 5 of the Agreement, and were the responsibility of Husband. The last of such payments was made on July 7, 1985.

5. Assuming that the taxes had not been paid by Wife, such taxes would not have been dischargeable in this bankruptcy proceeding.

Conclusions of Law

As Wife made payment on husband's behalf of an obligation to the Internal Revenue Service which could not be discharged in this bankruptcy proceeding, this Court finds that Wife has the rights of the Internal Revenue Service relative to the amounts paid to satisfy husband's

obligation, and as such, such debt it not dischargeable, and is owed by Husband to Wife.

Judgment

It is therefore, by the Court this day of 1993.

ORDERED, that Husband's obligation to pay Wife the sum of Five Thousand One Hundred Eighty-Two and 45/100 Dollars ($5,182.45), plus interest from July 7, 1985, is not dischargeable in the Husband's bankruptcy proceeding, and the Court hereby awards judgment to Plaintiff Marie Baxter and against Defendant Tyrone Thomas in the amount of Five Thousand One Hundred Eigh ty-Two and 45/100 ($5,182.45), plus interest at the judgment rate from July 7, 1985, plus costs. The remaining claims in Plaintiff's Complaint are dismissed.

Martin V. B. Bostetter, Jr.
Chief Judge

I ASK FOR THIS:

YOUNG, GOLDMAN & VAN BEEK

BY:

Neil D. Goldman
510 King Street, Suite 416
P.O. Box 1946
Alexandria, Virginia 22313
(703) 684-3260

Attorney for Plaintiff

COPIES TO:

Neil D. Goldman
YOUNG, GOLDMAN & VAN BEEK
510 King Street, Suite 416
P.O. Box 1946
Alexandria, Virginia 22313

Tyrone Thomas
5628 Fillmore Avenue
Alexandria, Virginia 22311-1534

NOTICE OF JUDGMENT OR ORDER

Entered on Docket
August 5, 1993

APPENDIX E

UNITED STATES CONSTITUTION

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

APPENDIX F

Bankruptcy Code
11 USCS Section 507(a)(7)

(a) The following expenses and claims have priority in the following order:

(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt

(A) is assigned to another entity, voluntarily, or by operation of law, or otherwise; or

(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.

APPENDIX G

Bankruptcy Code
11 USCS Section 523(a)(5)

(a) A discharge under Section 727, 1141, 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts

assigned pursuant to section 402(a)(26) of the Social Security Act, 42 USCS Section 602(a)(26), or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State) or (B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support

APPENDIX H

Internal Revenue Code Section 6501

6501. Limitations on assessment and collection.

(a) General rule. Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in Court without assessment for collection of such tax shall be begun after the expiration of such period.